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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 WILLIAM BARTON,
12 Petitioner,
13 v.
14 SUPERIOR COURT,
15 Respondent.
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Case No. CV 18-06853 FMO (RAO)

MEMORANDUM AND ORDER RE
SUMMARY DISMISSAL OF
PETITION FOR WRIT OF
HABEAS CORPUS AND DENIAL
OF CERTIFICATE OF
APPEALABILITY

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18 **I. BACKGROUND**

19 On July 2, 2018, Petitioner William Barton (“Petitioner”) filed a Petition for
20 Writ of Habeas Corpus (“Petition”) in the Northern District of California. Pet.,
21 Dkt. No. 1. The Petition was transferred to the Central District of California on
22 August 6, 2018. Dkt. No. 4.

23 Petitioner was convicted of his underlying criminal offense in 1976. Pet. at
24 3. Petitioner seeks to return to his sentencing court for the purpose of submitting
25 evidence relevant to a youth offender parole hearing. *Id.* at 4. Petitioner indicates
26 that he did not appeal from his conviction, and he has not filed any other petitions,
27 applications, or motions with respect to the conviction or commitment. *Id.* at 6, 7.
28 Records of the California Supreme Court do not reflect the filing of any habeas

1 petitions by Petitioner.¹ Petitioner previously filed a federal habeas petition raising
2 the same claim, which this Court dismissed without prejudice for failure to exhaust.
3 *See* Case No. 2:18-cv-05863-FMO-RAO, Dkt. Nos. 10-11 (C.D. Cal. Aug. 17,
4 2018).

5 The Court issued a screening order on August 10, 2018. Dkt. No. 7. The
6 order directed Petitioner to submit a response explaining his exhaustion of state
7 remedies by August 24, 2018. Dkt. No. 7. Because it appeared that Petitioner may
8 have intended to file the Petition in state court, the Court also provided Petitioner
9 with a copy of the Petition and a Notice of Dismissal form. *Id.* To date, Petitioner
10 has not filed a response or a Notice of Dismissal.

11 **II. DISCUSSION**

12 A state prisoner must exhaust his state court remedies before a federal court
13 may consider granting habeas corpus relief. 28 U.S.C. § 2254(b)(1)(A); *O’Sullivan*
14 *v. Boerckel*, 526 U.S. 838, 842, 119 S. Ct. 1728, 144 L. Ed. 2d. 1 (1999). To satisfy
15 the exhaustion requirement, a habeas petitioner must fairly present his federal
16 claims in the state courts in order to give the State the opportunity to pass upon and
17 correct alleged violations of the prisoner’s federal rights. *Duncan v. Henry*, 513
18 U.S. 364, 365, 115 S. Ct. 887, 130 L. Ed. 2d 865 (1995) (per curiam). A habeas
19 petitioner must give the state courts “one full opportunity” to decide a federal claim
20 by carrying out “one complete round” of the state’s appellate process in order to
21 properly exhaust a claim. *O’Sullivan*, 526 U.S. at 845. He must present his claims
22 to the highest state court with jurisdiction to consider it or demonstrate that no state
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24 ¹ The Court takes judicial notice of the records of the California Supreme Court,
25 which are available at <http://appellatecases.courtinfo.ca.gov>. *See* Fed. R. Evid.
26 201(b)(2) (providing that a court may take judicial notice of adjudicative facts that
27 “can be accurately and readily determined from sources whose accuracy cannot
28 reasonably be questioned”); *Harris v. Cty. of Orange*, 682 F.3d 1126, 1131-32 (9th
Cir. 2012) (noting that a court may take judicial notice of federal and state court
records).

1 remedy remains available. *Peterson v. Lampert*, 319 F.3d 1153, 1156 (9th Cir.
2 2003) (en banc).

3 Under Rule 4 of the Rules Governing Section 2254 Cases in the United
4 States District Courts, the Court may dismiss a petition “[i]f it plainly appears from
5 the petition and any attached exhibits that the petitioner is not entitled to relief in
6 the district court.” The “Ninth Circuit has held that a federal court may raise the
7 failure to exhaust issue *sua sponte* and may summarily dismiss on that ground.”
8 *White v. Paramo*, Case No. CV 16-03531-ODW (KES), 2016 WL 3034669, at *2
9 (C.D. Cal. May 27, 2016) (citing *Granberry v. Greer*, 481 U.S. 129, 134-35, 107 S.
10 Ct. 1671, 95 L. Ed. 2d 119 (1987); *Stone v. San Francisco*, 968 F.2d 850, 856 (9th
11 Cir. 1992); *Cartwright v. Cupp*, 650 F.2d 1103, 1104 (9th Cir. 1982) (per curiam))
12 (dismissing petition for failure to exhaust state remedies with respect to sole claim
13 for relief).

14 Here, Petitioner does not claim to have brought before the California state
15 courts his request to return to his sentencing court, and the records of the California
16 Supreme Court do not reflect any such actions instituted by Petitioner. Although
17 the exhaustion requirement may be excused under limited circumstances, *see* 28
18 U.S.C. § 2254(b)(1)(B)(i)-(ii), Petitioner has not provided any reasons as to why he
19 should be excused from the exhaustion requirement. It thus is apparent that
20 Petitioner has failed to exhaust his claim in state court, and summary dismissal of
21 this action is appropriate.

22 Dismissal of the Petition is without prejudice to Petitioner’s later pursuing
23 habeas relief in federal court upon exhausting available remedies in the state courts.
24 Petitioner is warned, however, that under 28 U.S.C. § 2244(d)(1), “[a] 1-year period
25 of limitations shall apply to an application for a writ of habeas corpus by a person
26 in custody pursuant to the judgment of a State court.”

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III. CERTIFICATE OF APPEALABILITY

Under the Antiterrorism and Effective Death Penalty Act of 1996, a state prisoner seeking to appeal a district court's final order in a habeas corpus proceeding must obtain a Certificate of Appealability ("COA") from the district judge or a circuit judge. 28 U.S.C. § 2253(c)(1)(A). A COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003).

When the Court dismisses a petition on procedural grounds, it must issue a COA if the petitioner shows: (1) "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right"; and (2) "that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 478, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

Here, the Court is summarily dismissing the instant Petition without prejudice because the Court has determined that Petitioner has failed to exhaust his habeas claim in state court. The Court finds that Petitioner cannot make the requisite showing that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

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1 **IV. ORDER**

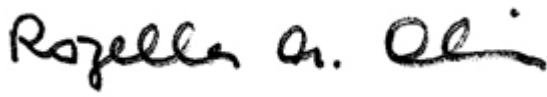
2 Based on the foregoing, IT IS ORDERED THAT:

- 3 1. The Petition is **DISMISSED** without prejudice; and
4 2. A Certificate of Appealability is **DENIED**.

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6 DATED: September 17, 2018

7 _____/s/_____
8 FERNANDO M. OLGUIN
9 UNITED STATES DISTRICT JUDGE

10 Presented by:

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13 ROZELLA A. OLIVER
14 UNITED STATES MAGISTRATE JUDGE
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